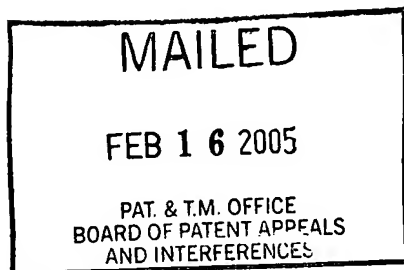




UNITED STATES PATENT AND TRADEMARK OFFICE

DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES
BOX INTERFERENCE, WASHINGTON, D.C. 20231

Filed by: Judge James T. Moore
Telephone: 571-272-9797
Facsimile: 571-273-0042



Applicants: BESEMER
Application No.: 10/619,224
Filed: 07/12/03
For: Bioarray chip reaction apparatus and its
manufacture

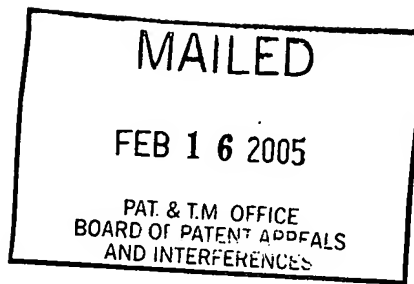
The above-identified application or patent has been forwarded to the Board of Patent Appeals and Interferences because it is adjudged to interfere with another application or patent. An interference has been declared. The interference is designated as No. 105,285.

Notice is hereby given the parties of the requirement of the law for filing in the Patent and Trademark Office a copy of any agreement "in connection with or in contemplation of the termination of the interference." 35 U.S.C. § 135(c).

A handwritten signature in black ink, appearing to be 'James T. Moore', written over a horizontal line.

JAMES T. MOORE
Administrative Patent Judge

Filed by: James T. Moore
Administrative Patent Judge
Mail Stop Interference
P.O. Box 1450
Alexandria VA 22313-1450
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Fax: 571-273-0042



Paper 1

Filed: February 16, 2005

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

CAROL T. SCHEMBRI,
Junior Party
(Patent 6,513,968 B2),

v.

DONALD M. BESEMER, VIRGINIA W. GOSS,
and
JAMES L. WINKLER,
Senior Party
(Application 10/619,224).

Patent Interference No. 105,285

DECLARATION

Part A. Declaration of interference

An interference is declared (35 U.S.C. § 135(a)) between the above-identified parties. Details of the application patent, count and claims designated as corresponding or as not corresponding to the count appear in Parts E and F of this DECLARATION.

Part B. Judge managing the interference

Administrative Patent Judge James T. Moore has been designated to manage the interference. 37 CFR § 41.104(a) [Bd. R. 104(a)].

Part C. Standing order

A Trial Section STANDING ORDER [SO] accompanies this DECLARATION. The STANDING ORDER applies to this interference.

Part D. Initial conference call

A telephone conference call to discuss the interference is set for **1:00 p.m. on April 19, 2005** (the Board will initiate the call).

No later than **two business days** prior to the conference call, each party shall file and serve by facsimile (SO ¶ 4.5) a list of the motions (Bd. R. 120; Bd. R. 204; SO ¶ 26) the party intends to file.

A sample schedule for taking action during the motion phase appears as Form 2 in the STANDING ORDER. Counsel are encouraged to discuss the schedule prior to the conference call and to agree on dates for taking action. A typical motion period lasts approximately eight (8) months. Counsel should be prepared to justify any request for a longer period.

Part E. Identification and order of the parties

Junior Party

Named inventors: Carol T. Schembri

Patent: 6,513,968 B2

Title: APPARATUS AND METHOD FOR MIXING A FILM OF FLUID
Assignee: AGILENT TECHNOLOGIES, INC.
INTELLECTUAL PROPERTY ADMINISTRATION
P.O. BOX 58043, M/S 51UPD
SANTA CLARA, CALIFORNIA 95052

Accorded Benefit: 09/137,963, filed Aug. 21, 1998

(now patent 6,186,659)

Senior Party

Named Inventors: Donald M. Besemer, Virginia Goss, and James L. Winkler

Application: 10/619,224

Title: BIOARRAY CHIP REACTION APPARATUS AND ITS METHOD
OF MANUFACTURE

Assignee: AFFYMETRIX, INC., A DELAWARE CORPORATION
3380 CENTRAL EXPRESSWAY
SANTA CLARA, CALIFORNIA 95051

Accorded Benefit: 10/229,759, filed August 28, 2002 (now patent 6,733,977)
10/046,623, filed January 14, 2002 (now patent 6,551,817)
09/907,196, filed July 17, 2001 (now patent 6,399,365)
09/302,052, filed April 29, 1999 (now patent 6,287,850)
08/485,452, filed June 07, 1995 (now patent 5,945,334)

The senior party is assigned exhibit numbers 1001-1999. The junior party is assigned exhibit numbers 2001-2999. Bd. R. 154(c)(1). The senior party is responsible for initiating settlement discussions. SO ¶ 18.

Part F. Count and claims of the parties

Count 1

A method according to claim 20¹ or claim 32² of Patent 6,513,968

or

claim 66 or claim 75 of application 10/619,224.

The claims of the parties are:

Schembri: 1-35

Besemer: 66-70; 73-78

The claims of the parties which correspond to Count 1 are:

Schembri: 20-26³; 30-35

Besemer: 66-70; 73-78

¹ Claim 20. A method comprising:

providing a first substrate and a second substrate having inner surfaces that define a closed chamber therebetween, said chamber adapted to retain a quantity of fluid so that the fluid is in contact with both inner surfaces, and wherein at least one of said inner surfaces is functionalized with polynucleotides, polypeptides, or polysaccharides;

introducing a fluid containing a plurality of components into the closed chamber so as to provide a quantity of fluid therein in contact with both inner surfaces;

providing a bubble in the fluid; and

moving a bubble within the fluid to result in mixing.

² Claim 32. A method comprising:

providing a first substrate and a second substrate having inner surfaces that define a closed chamber therebetween, said chamber adapted to retain a quantity of fluid so that the fluid is in contact with both inner surfaces, and wherein at least one of said inner surfaces is functionalized with an array of RNA or DNA probes;

introducing a fluid sample containing DNA or RNA into the closed chamber so as to provide a quantity of fluid therein in contact with both inner surfaces;

providing a bubble in the fluid;

moving a bubble within the fluid to result in mixing;

after hybridization is complete, removing the sample from the apparatus; and

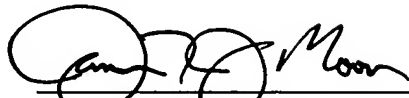
analyzing the functionalized inner surface for DNA or RNA that has hybridized.

³ There appears to be a printing error arising from Paper 3 (amendment B), filed February 12, 2001, in 09/782,542. Although claim 22 in the printed patent depends from claim 2, the claim actually depends from claim 20.

The claims of the parties which do not correspond to Count 1, and therefore are not involved in the interference, are:

Schembri: 1-19; 27-29

Besemer: none

A handwritten signature in black ink, appearing to read "James T. Moore", is written over a horizontal line.

JAMES T. MOORE
Administrative Patent Judge

Enc:

Copy of STANDING ORDER
Copy U.S. Patent 6,513,968 B2
Copy of claims of 10/619,224

Revised September 2004

Part G. Heading to be used on papers

The heading in SO Form 1 must be used on all papers filed in this interference. See SO ¶ 7.2.1. The administrative patent judge and parties must be indicated as follows:

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES
(Administrative Patent Judge James T. Moore)

CAROL T. SCHEMBRI,
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DONALD M. BESEMER, VIRGINIA W. GOSS,
and
JAMES L. WINKLER,
Senior Party
(Application 10/619,224).

Patent Interference No. 105,285

Part H. Order form for requesting file copies

When requesting copies of files, use of SO Form 4 will greatly expedite processing of the request. Please attach a copy of Part E of this DECLARATION with a hand-drawn circle around the patents and applications for which a copy of a file wrapper is requested.

cc (via overnight delivery):

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Palo Alto, CA 94304-1317

Telephone: (650)485-2386

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